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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,529	09/28/2006	Tetsuya Otsaka	SH-0069PCTUS	4646
21254 7590 02/23/2010 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817			EXAMINER DEGHAN, QUEENIE S	
			ART UNIT 1791	PAPER NUMBER
			MAIL DATE 02/23/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,529	<b>Applicant(s)</b> OTOSAKA, TETSUYA	
	<b>Examiner</b> QUEENIE DEGHAN	<b>Art Unit</b> 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4-5, 7-9, and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura et al. (2003/0015004). Nakamura discloses an apparatus that is vertical for manufacturing porous glass base material comprising a starting member (1) placed vertically, a burner (2) capable of depositing glass particles, and a plurality of gas inlets (9 & 13) provided in one or more lateral walls including the burner, in the upper portions of the wall (s) and along a ceiling of the process chamber (fig 1, 2, 6 & 8, [0006], [0027], [0031]-[0032], [0034]-[0035]).

3. Regarding claim 2, the gas inlets include gas inlet (9) and gas inlet (13), wherein gas inlets (13) are provided in lateral walls that oppose each other with a porous glass base material being position there between (figure 2).

4. Regarding claims 4, 8 and 9, Nakamura discloses an exhaust outlet (10, 11) in a lateral wall opposing the lateral wall with the burner (figure 2, [0027]).

5. Regarding claim 5, Nakamura discloses a width of the lateral wall in which the exhaust outlet is provided is smaller than a width of a lateral wall in which a gas inlet is provided (figure 2, 3, 4a, 4b and 7, [0030]).

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6. Regarding claims 7 and 13-17, the ceiling and lateral walls of the process chamber along which a gas supplied from the gas inlets flows have formed by flat surfaces (all figures, [0028], [0030]).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 3, 9, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (2003/0015004) in view of Kuwabara et al. (JP 2000-109327). Nakamura discloses gas inlets providing a smooth flow of gas for proper exhausting of undeposited glass particles. However, Nakamura fails to specifically disclose slit-like gas inlets along the left and right edges of the burner wall. Kuwabara teaches of slit-like gas inlets (11a) in a process chamber along left and right edges of a lateral wall on which a burner is provided (figures 1-3). Placement of such gas inlets allow for a

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laminar flow of gas along the walls of the chamber so as to prevent sticking of the undeposited glass particles. It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the slit-like gas inlets on the left and right edges of the lateral wall with the burner in apparatus of Nakamura in order to provide for a laminar air flow along the inner wall of the process chamber and further enhance the prevention the sticking of glass particles to the walls.

10. For claims 9 and 14, see above.

11. Claims 6, 10, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (2003/0015004) and Kuwabara et al. (JP 2000-109327), as applied to claims 1, 2 and 3 above, in further view of Ishihara (2004/0134236). Nakamura fails to disclose a gas inlet provided in a lateral wall in which the exhaust outlet is provided. Ishihara teaches a process chamber comprising a burner on one lateral wall and an exhaust outlet on an opposing lateral wall, wherein a gas inlet (15) is provided in the lateral wall in which the exhaust outlet is provided (figure 1, [0022], [0025]). Furthermore, according to figure 1, Ishihara discloses the distance between the lowest part of the gas inlet is more than 30mm from the highest part of the exhaust outlet, as can be seen when compared to the respective lengths of the core rod (400mm) and traverse length of the starting rod (1000mm) ([0027]). It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized an additional gas inlet on the lateral wall on which the exhaust outlet is provided in the apparatus of Nakamura in order to provide a positive pressure in the process chamber for minimizing contamination of impurities.

12. For claim 17, see above.

***Response to Arguments***

13. Applicant's arguments filed November 4, 2009 have been fully considered but they are not persuasive. The applicant argues the gas inlets (13) of Nakamura are not provided in the upper portions of the lateral walls and along the ceiling of the alleged process chamber. The claim limitation "*wherein a plurality of gas inlets is provided in one or more lateral walls of a process chamber including a burner for the deposition therein, in upper portions of the lateral walls and along a ceiling of the process chamber*", comprises a plurality of gas inlets, first of all. Secondly, the claim further recites the placement of these inlets can be in the upper portions of a lateral wall. Also, the placement of these inlets can be along the ceiling of the process chamber. Clearly, Nakamura has disclosed a gas inlet (9) that is placed along the ceiling of the process chamber. Nakamura has also disclosed gas inlets (13) that are placed at least in an upper portion of lateral walls. The applicant's arguments seem to think the claim is limited to one gas inlet and that one gas inlet is located in both a upper portion of a lateral wall as well along the ceiling of the process chamber. If the applicant wishes to claim this more narrow version of claim, then they are welcomed to amend the claim as such. The applicant has also question whether the process chamber is a process chamber by inserting "alleged" into the arguments. A deposition process clearly occurs within the reaction vessel 4 of Nakamura. This clearly makes it a process chamber. The applicant has not provided any substantial support of facts to indicate otherwise.

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14. Furthermore, the applicant argues Nakamura fails to teach a plurality of gas inlets. The applicant has not provided any supportive or factual findings to support this argument. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Clearly, the pair of gas inlets numbered 13 and the gas inlet 9 makes up a plurality of gas inlets.

15. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUEENIE DEGHAN whose telephone number is (571)272-8209. The examiner can normally be reached on Monday through Friday 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven P. Griffin/



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Supervisory Patent Examiner, Art

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Q Dehghan